

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

CHADWYCK MARTIN,

Plaintiff,

v.

KURON D. BARNHILL and WERNER
ENTERPRISES, INC.,

Defendants.

CIVIL ACTION FILE
NO. _____

REMOVED FROM STATE COURT
OF FULTON COUNTY
CAFN: 23EV004008

Jury Trial Demanded

**DEFENDANT WERNER ENTERPRISES, INC.'S NOTICE OF
REMOVAL WITH BRIEF IN SUPPORT**

COMES NOW, Defendant **WERNER ENTERPRISES, INC.**, and files this
its Notice of Removal and Brief in Support of Notice of Removal to United States
District Court, showing this Honorable Court as follows:

PROCEDURAL BACKGROUND

1. A civil action was filed on July 6, 2023, in the State Court of Fulton
County, State of Georgia. That action is designated there as Civil Action File No.:
23EV004008. Defendant Werner Enterprises, Inc. has not yet been served properly.
Defendant Kuron Barnhill has not yet been served properly. This removal is timely

filed. The amount in controversy exceeds \$75,000.00. Plaintiff's Complaint requests a recovery of no less than \$100,442.12.

2. Defendants file herewith a copy of all process, pleadings, and orders received by Defendants in Civil Action File No.: 23EV004008, pursuant to 28 USC §1446 (attached hereto as "Exhibit A").

3. Plaintiff Chadwyck Martin is a resident and citizen of the State of Texas. (Pl's Compl. ¶ 1). If a person is domiciled in [Michigan], he was a citizen of that state within the meaning of the Judicial Code. *Gilbert v. David*, 235 U.S. 561, 569 (1915).

4. Defendant Kuron D. Barnhill is an individual and citizen residing in the State of Georgia. (Pl.'s Compl. ¶ 2). If a person is domiciled in [Michigan], he was a citizen of that state within the meaning of the Judicial Code. *Gilbert v. David*, 235 U.S. 561, 569 (1915).

5. Defendant Werner Enterprises, Inc., is currently, and was at the commencement of Civil Action File No.: 23EV004008, and at all times since has been a corporation organized and existing under the laws of the State of Nebraska with a principal place of business in Nebraska. (*See* Compl, ¶ 3; *see also* Georgia Secretary of State Business Records, attached hereto as "Exhibit B").

5. The action described above is a civil action with a claim of which this Court has original jurisdiction, and it is one that may be removed to this Court by the Defendants pursuant to the provisions of 28 USC §§ 1332 and 1441 et seq., in that there is complete diversity among the Parties, the Parties are not residents of the same State, and the amount in controversy exceeds \$75,000.00 exclusive of interest and costs.

- a. All parties to this action are completely diverse. Plaintiff is a citizen of the State of Texas. Defendant Kuron D. Barnhill is a citizen of the State of Georgia. Defendant Werner Enterprises, Inc. is a citizen of the State of Nebraska. Existence of diversity jurisdiction is determined by the citizenship of the parties at the time of the filing of the complaint, not at the time the cause of action arose or after the action is commenced. *Oh v. Ford Motor Co.*, 79 F. Supp. 2d 1375, 1377 (N.D. Ga. 1999) (citing *Mann v. City of Tucson, Dept. of Police*, 782 F.2d 790, 794 (9th Cir. 1986)).
- b. The amount in controversy exceeds \$75,000.00, as Plaintiff's Complaint requests relief for no less than \$100,442.12 (*See* Compl. ¶ 3). The amount in controversy requirement for diversity jurisdiction is satisfied in this case because it is clear from the face of Plaintiff's Complaint and

the demand that the “matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.” 28 U.S.C. § 1332(a).

8. Defendants attach hereto a copy of Defendant’s Notice of Removal which has been sent for filing in the State Court of Fulton County, State of Georgia, marked as Exhibit “C”.

9. All Defendants agree to this removal.

LEGAL ARGUMENT AND CITATION TO AUTHORITY

A. This Court has Original Jurisdiction of this Cause of Action Pursuant to 28 U.S.C. § 1332 and this Cause of Action is Removable According to 28 U.S.C. § 1441.

This action is properly removable under 28 U.S.C. § 1441(a) and (b) because this United States District Court for the Northern District of Georgia – Atlanta Division has original jurisdiction of this case under 28 U.S.C. § 1332(a), as amended, which provides in pertinent part:

The District Court shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value or \$75,000, exclusive of interest and costs, and is between – (1) Citizens of different states.

28 U.S.C. § 1332(a).

1. THERE IS COMPLETE DIVERSITY.

All parties to this action are completely diverse. Existence of diversity

jurisdiction is determined by the citizenship of the parties at the time of the filing of the complaint, not at the time the cause of action arose or after the action is commenced. *Oh v. Ford Motor Co.*, 79 F. Supp. 2d 1375, 1377 (N.D. Ga. 1999) (citing *Mann v. City of Tucson, Dept. of Police*, 782 F.2d 790, 794 (9th Cir. 1986)).

Plaintiff was a citizen and resident of Texas at the time of filing of the Complaint. (Pl.’s Compl. ¶ 1). *See Gilbert v. David*, 235 U.S. 561, 569 (1915) (“If a person is domiciled in [a particular state], he is a citizen of that state within the meaning of the Judicial Code.”). Therefore, Plaintiff is a citizen of Texas.

Defendant Kuron D. Barnhill is an individual and citizen residing in the State of Georgia. (Pl.’s Compl. ¶ 2). If a person is domiciled in [a particular state], he was a citizen of that state within the meaning of the Judicial Code. *Gilbert v. David*, 235 U.S. 561, 569 (1915). Defendant Kuron D. Barnhill is a citizen of Georgia.

Defendant Werner Enterprises, Inc., is currently, and was at the commencement of Civil Action File No.: 23EV004008, and at all times since has been a corporation organized and existing under the laws of the State of Nebraska with a principal place of business in Nebraska. (*See* Pl. Compl., ¶ 3; *see also* “Exhibit B”).

Accordingly, complete diversity exists in this cause of action between Plaintiff and all Defendants, and therefore, this case is removable under 28 U.S.C. § 1332.

2. THE AMOUNT IN CONTROVERSY EXCEEDS \$75,000.00.

There is evidence to establish that Plaintiff is seeking damages in excess of Seventy-Five Thousand Dollars (\$75,000). Plaintiff's complaint seeks compensation for substantial injuries and damages including medical expense, mental and physical pain and suffering, loss of capacity to labor, and past and continuing inability to live a normal life. (Pl.'s Compl. ¶ 28). Per Plaintiff's Complaint, Plaintiff is clearly seeking damages in excess of \$75,000. Plaintiff seeks \$100,442.12 (*See* Compl. ¶ 3). Therefore, there are facts to a legal certainty to support that the amount in controversy exceeds the jurisdictional requirement. Accordingly, because the parties are completely diverse and the amount in controversy exceeds the statutory requirement, this case may be removed to the United States District Court for the Northern District of Georgia – Atlanta Division.

CONCLUSION

There is complete diversity of citizenship between the parties to this action and the amount in controversy exceeds \$75,000. Pursuant to 28 U.S.C. § 1446, the Defendant Werner Enterprises, Inc. has sought removal within thirty (30) days from the moment the action became removable and, therefore, this Court has the authority to accept jurisdiction of this case pursuant to 28 U.S.C. §§ 1332 and 1446.

Respectfully submitted this 9th day of August, 2023.

**QUINTAIROS, PRIETO, WOOD
& BOYER, P.A.**

/s/ SANDRO STOJANOVIC

SCOTT H. MOULTON

GEORGIA STATE BAR No. 974237

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CERTIFICATE OF COMPLIANCE

The foregoing **DEFENDANT WERNER ENTERPRISES, INC.’S
NOTICE OF REMOVAL WITH BRIEF IN SUPPORT** is double spaced in 14-
point Times New Roman font and complies with the type-volume limitation set forth
in Local Rule 7.1.

This 9th day of August, 2023.

**QUINTAIROS, PRIETO, WOOD
& BOYER, P.A.**

/s/ SANDRO STOJANOVIC
SCOTT H. MOULTON
GEORGIA STATE BAR No. 974237
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CERTIFICATE OF SERVICE

I hereby certify that on this day I have served a copy of the within and foregoing **DEFENDANT WERNER ENTERPRISES, INC.'S NOTICE OF REMOVAL WITH BRIEF IN SUPPORT** upon all parties to this matter by depositing same in the U.S. Mail and/or via e-file and serve as required by law:

Chadwyck Martin
6822 Dusty Dawn
Houston, Texas 77086
(713) 505-0168
chad.martin1981@icloud.com
Pro Se Plaintiff

This 9th day of August, 2023.

**QUINTAIROS, PRIETO, WOOD
& BOYER, P.A.**

/s/ SANDRO STOJANOVIC

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